

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

OPENWAVE SYSTEMS INC.,

Plaintiff, Plaintiff,

v.

APPLE INC., et al.,

Defendants.

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C.A. No. 11-765-RGA

JURY TRIAL DEMANDED

**DEFENDANTS RESEARCH IN MOTION LTD., RESEARCH IN MOTION
CORP., AND APPLE INC.'S ANSWERING BRIEF IN OPPOSITION TO
PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT**

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Dated: March 14, 2013
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I. NATURE AND STAGE OF THE PROCEEDINGS

Defendants Research In Motion Ltd. and Research In Motion Corp. (“BlackBerry”¹), and Apple Inc. (“Apple”) (collectively, “Defendants”) moved to dismiss or strike plaintiff Unwired Planet, Inc.’s (“UP”) willful and indirect patent infringement claims in the First Amended Complaint on February 1, 2013. D.I. 12, 13 (“Defendants’ Motion”). UP opposed Defendants’ Motion on February 25, 2013. D.I. 25. At the same time, UP filed a motion for leave to amend its complaint a second time. D.I. 23, 24 (“UP’s Motion for Leave to Amend”). On March 7, 2013, Defendants filed a reply brief in support of Defendants’ Motion, arguing that UP’s proposed Second Amended Complaint did not cure the defects in the First Amended Complaint. D.I. 27 (“Defendants’ Reply”). Defendants now file this short opposition to UP’s Motion for Leave to Amend.

II. SUMMARY OF ARGUMENT

As already explained in Defendants’ Reply, UP’s Motion for Leave to Amend should be denied because UP’s proposed Second Amended Complaint, like UP’s First Amended Complaint, does not state a claim for willful or indirect patent infringement. UP has not sufficiently alleged claims for indirect infringement. As a matter of law, UP cannot allege claims for willful infringement because of UP’s unequivocal admissions that Defendants’ products do not infringe the patents-in-suit under the claim construction ruling issued by the Administrative Law Judge at the International Trade Commission (“ITC”).

¹ RIM announced on January 30, 2013 that it would be doing business as BlackBerry.

III. STATEMENT OF FACTS

Relevant facts concerning the ITC case are set forth in Defendants' Motion. D.I. 13 at 3-4. The reasons why the Second Amended Complaint is still deficient in its willful and indirect infringement claims are set forth in Defendants' Reply. D.I. 27 at 2-10.

IV. ARGUMENT

For the reasons stated in Defendants' Reply (D.I. 27), UP's proposed Second Amended Complaint does not state a claim for willful or indirect patent infringement because:

- Defendants cannot willfully infringe or be objectively reckless in light of UP's admissions in the ITC case after the claim construction ruling that Defendants' products do not infringe. *Id.* at 8-10.
- UP has not pleaded knowledge of the existence of the patents before 2010 or 2011. *Id.* at 3-4.
- UP has not correctly pleaded that the accused devices are "not a staple article or commodity of commerce suitable for substantial noninfringing use." *Id.* at 4-7.
- UP pleads knowledge of infringement solely on information and belief. *Id.* at 7-8.

Leave to amend is futile because the proposed Second Amended Complaint does not cure the problems with the First Amended Complaint. *See, e.g., Cal. Public Emps.' Retirement Sys. v. Chubb Corp.*, 394 F.3d 126, 165 (3d Cir. 2004) (leave to amend may be denied if the amendment is futile); *In re Burlington Coat Factory Secs. Litig.*, 114 F.3d 1410, 1434 (3d Cir. 1997) (amendment is futile if even the amended pleading would fail to state a claim upon which relief could be granted).

V. CONCLUSION

UP has not pleaded sufficient facts to state a claim for willful or indirect infringement. UP's proposed Second Amended Complaint does not correct the deficiencies and, therefore, Defendants' Motion should be granted and UP's Motion to Amend should be denied.

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CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on March 14, 2013, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I further certify that on March 14, 2013, the attached document was Electronically Mailed to the following person(s):

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